XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(29)

मामला क्रमांक Cr-A No. 498/01 [1] सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT Narad Prasad Dubey, son of Radhika Prasad Dubey, aged about 40 years, R/o. village and Tehsil Gendatola, District Rajnandgaon (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through P.S. Gendatola, Distt. Rajnandgaon (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

24-4-2007

Ku. Nirupma Bajpai, Advocate for the appellant.

Shri D.K.S. Gwalre, Additional Public Prosecutor for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais.*

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 24-4-2007 passed by Addl. Sessions Judge, Rajnandgaon in S.T. No. 146/2000, whereby the learned Addl. Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, for committing murder of Bhawani Shankar, sentenced him to undergo imprisonment for life, to pay a fine of Rs. 5000/-, and in default of payment of fine, to further undergo one year's R.I.

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Case of the prosecution in brief is that on 10th May 2000 at about 5 – 5.30 p.m. in the evening, P.W. 7 Ashwin Bai, daughter of the deceased went to fetch water from tube well. She saw that accused was attacking his father, therefore, she raised cries that the accused is attacking his father with a club. Hearing her cries, her brother P.W. 1 Arun Kumar and mother Laxmin Bai also came on the scene. By the time, the three reached to her father, the accused fled the scene of occurrence carrying club in his hand. Arun Kumar (P.W. 1) went to Police Station Gendatola and lodged report, based on that, First Information Report Ex.P-1 was registered. Investigating officer left for the scene of occurrence, after giving notice Ex. P-2, prepared inquest Ex. P-3 on the body of Bhawani Shankar. Blood stained soil and plain soil was taken into possession under Ex. P-5. The weapon of offence, club was taken into possession under Ex. P-6, site plan Ex. P-7 was prepared. Body of Bhawani Shankar was sent for post mortem examination to Primary Health Centre, Chhuriya under Ex. P-19 where Dr. S.K. Ahuja, conducted post mortem and prepared post mortem report Ex. P-20. He opined that cause of death is coma due to fracture of parietal bone and injuries of the brain tissues, nature of injury is homicidal in nature. After completion of investigation, charge sheet was filed in the court of Judicial Magistrate First Class, Rajnandgaon who in turn committed the case to the Sessions

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Judge, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution examined 13 witnesses at the trial in order to establish the charge against the accused. Statement of accused under Section 313 of Cr.P.C. was recorded, in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime.

Learned Addl. Sessions Judge after hearing the counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Ku. Bajpai on behalf of the appellant and Shri Gwalre on behalf of the State.

Ku. Bajpai has not disputed the homicidal death of Bhawani Shankar. Moreover, eye-witnesses P.W. 1 Arun Kumar and P.W. 7 Ashwin Bai, son and daughter of the deceased have categorically stated that they saw the accused attacking their father with club. The above ocular evidence of these two witnesses is corroborated by medical evidence of Dr. S.K. Ahuja (P.W. 5) who has stated that on 11-5-2000 he was working as Medical Officer in Primary Health Centre, Chhuriya where on the request of police station Gendatola, he conducted post mortem on the body of Bhawani Shankar. He noticed 4 lacerated wounds and 4 abrasions, parietal bone was fractured and brain was crushed, beneath the above injury,

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mandible bone was fractured, injuries were ante mortem in nature and the case of death was coma as a result of scull bone fracture, the death was homicidal in nature. In view of the above evidence, it is established that death of Bhawani Shankar was homicidal in nature.

As far as involvement of the accused –appellant in committing murder of Bhawani Shankar is concerned, P.W. 1 Arun Kumar and P.W. 7 Ashwin Bai are son and daughter of the deceased. They have categorically stated that they saw the accused assaulting their father and when they reached near their father, accused fled from the scene of occurrence carrying the club in his hand. Evidence of eye-witnesses is corroborated by evidence of P.W. 8 Dr. Lalit Kumar Jain who has stated that when he was working in his clinic, Arun Kumar came running and said that Narad has attacked his father with club, blood is oozing out of the injuries, therefore he should come and treat his father, on which he went to the place of occurrence and saw that mother of the deceased was sitting there keeping deceased in her lap.

Ku. Bajpai has argued that the incident is said to be of during day time and it has come in the prosecution evidence that number of persons have witnessed the incident, but they have not been examined.

On the other hand, Shri Gwalre has supported the judgment of the trial Court.

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	In this case, P.W. 10 Kamal Narayan, P.W. 11 Jairam and P.W. 12 Vijay Kumar Tripathi have been examined but they have turned hostile. It is true that no independent witness has supported the prosecution case but the evidence of P.W. 1 Arun Kumar and P.W. 7 Ashwin Bai is trust worthy for the reason that Ashwin Bai has stated that at the time of incident, she went to tube well to fetch water, at that time she saw that the accused was attacking his father with club and immediately Arun Kumar reached to the scene hearing cries of his sister. He immediately went to bring the doctor, who came on the scene and saw Bhawani Shankar in injured and dead condition. Doctor has stated that Arun Kumar came to him and disclosed that Narad has attacked his father, moreover, the documents have been produced by P.W. 1 Arun Kumar regarding power of attorney of Bhagwantin Bai in favour of his father Bhawani Shankar and judgment of the Sessions Court and S.D.O. regarding land dispute between Bhagwantin Bai, the adoptive mother of Bhawani Shankar as also the accused. From perusal of the judgments it reveals that Narad lost the case everywhere and he was not able to include his name in the revenue record, being frustrated, he assaulted the deceased. Therefore, there was motive behind the assault made by the accused, moreover the evidence of Arun Kumar and Ashwin Bai inspire confidence and there is nothing in cross-examination to discredit their version. Therefore, we are of the considered opinion	

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	that the finding of the trial Court convicting the accused for commission of murder is based on legal evidence. For the foregoing reasons, we are of the considered opinion, that there is no illegality or infirmity in the judgment of the trial Court. This appeal is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**